IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 492 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMARSINH S THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MR VM PANCHOLI, APP for Respondent No. 1

UNSERVED-REFUSED (N) for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 20/01/2001

ORAL JUDGEMENT

1. The petitioner was convicted of the offence punishable under Section 453 of Indian Penal Code and sentenced to suffer simple imprisonment for one year and

pay the fine of Rs.500/- by the learned Metropolitan Magistrate, Court No.20, Ahmedabad. The petitioner preferred an appeal to the Sessions Court at Ahmedabad against the said order of conviction and sentence (Criminal Appeal No.17 of 1994). The appeal was admitted and record and proceedings was called for. However, it appears that during the pendency of the appeal, the petitioner's advocate expired and, hence, notice was issued to the petitioner. The notice was served on the petitioner on 04.07.1994. However, no appearance was entered on his behalf nor did he appear in person to argue the appeal. The learned Additional Sessions Judge before whom the appeal was placed for hearing felt that, in the circumstances, the court had no option but to dismiss the Appeal for non-prosecution and hence by his order dated 18.11.1994 dismissed the Appeal for non-prosecution.

2. It is the said order of the learned Additional Sessions Judge which is under challenge in this Revision Application filed by the petitioner.

3. The learned counsel for the petitioner cited the decision of the Supreme Court in PARASURAM PATEL & ANOTHER vs. STATE OF ORISSA [(1994) 4 SCC 664] in which the Supreme Court has observed that "it is now well-settled that no Appeal can be dismissed on the ground of default in appearance. The Court has to go through the record of the case even in the absence of the appellants or their counsel and decide the matter on merit." The Supreme Court therefore set aside the order of dismissal passed by the High Court and sent the matter back to the High Court for decision on merit.

4. Thus, the learned Additional Sessions Judge was not justified in dismissing the appeal for non-prosecution. The petition is, therefore, allowed. The order of dismissal is set aside and the matter is remanded to the Sessions Court, Ahmedabad for decision on merits. Rule is made absolute accordingly. The petitioner shall apply to the Sessions Court for fresh bail within two months from today. If he fails to do so, the Sessions court may pass appropriate orders.

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